

Attorney Docket No. 5725.0634
Application No. 09/809,009

REMARKS

I. Status of the Claims

Claims 1-65 are pending in this application. No claims have been amended.

II. Rejection under 35 U.S.C. § 103

de la Mettrie '295 and Research Disclosure

Claims 1-6 and 8-65 are rejected under § 103(a) as being unpatentable over U.S. Patent No. 5,989,295 ("de la Mettrie '295") in view of Research Disclosure, December 1999, pp. 1552-1554 (XP-000934522, "Research Disclosure"). *Office Action* at pp. 2-3. Applicants respectfully traverse this rejection.

Each of independent claims 1, 22, 42, and 64 recite at least one anionic associative polymer comprising at least one carboxylic acid group and at least one ester derived from a fatty alcohol and a carboxylic acid, and at least one additional anionic associative polymer comprising at least one carboxylic acid group and at least one ester derived from an alkoxylated fatty alcohol and a carboxylic acid.

The Examiner rejects the claims because de la Mettrie '295 teaches a hair dyeing composition comprising "at least one anionic polymer." *Id.* at p. 3. The Research Disclosure is cited for teaching that "polymers in the dyeing composition prevent the composition from running out of the hair and make the composition [maintain] its gelled nature," *i.e.*, Acrylate/Steareth-20 Methacrylate Copolymers or Acrylates/Methacrylates/Beheneth-25 Methacrylate Copolymers. *Id.* The Examiner supports the combination of references because both references are in the "analogous art of cosmetic formulation ... one of ordinary skill in the art [would] be

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motivated to use the polymers [of Research Disclosure] in the hair dyeing composition of [de la Mettrie '295]. *Id.*

Applicants maintain their arguments of the previous Reply, in that the Examiner has used improper hindsight to reconstruct the Applicants' claims. The Examiner chooses de la Mettrie '295 for teaching at least one anionic polymer and the Research Disclosure for disclosing Acrylate/Stearth-20 Methacrylate Copolymers or Acrylates/Methacrylates/Beheneth-25 Methacrylate Copolymers without any motivation to combine the references. If anything, de la Mettrie '295 teaches away from the use of traditional thickeners that can "impede the rise of the dye on the fibres, which is reflected in a dull shade." *Id.* at col. 1, lines 45-51. If such traditional thickeners were used, more dye would be required to obtain an intense shade, along with greater amounts of solvents and/or surfactants to dissolve the dye. *Id.* Although Applicants do not characterize the Acrylate/Stearth-20 Methacrylate Copolymers or Acrylates/Beheneth-25 Methacrylate Copolymers of the Research Disclosure as traditional or non-traditional, one of ordinary skill in the art, however, would be cautioned against simply adding other thickeners in view of de la Mettrie's teachings that traditional thickeners can result in an inferior coloring.

In the Advisory Action, the Examiner also alleges that "Applicant has not presented any additional data or showing to overcome the rejection of record." *Advisory Action* at continuation sheet. Applicants respectfully submit that the specification shows unexpected results for a composition having both the anionic associative polymer and the additional anionic associative polymer, as claimed. In the Example, the inventors tested the following compositions:

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- Comparative Composition A₁ contained the anionic associative polymer but not the additional anionic associative polymer;
- Comparative Composition A₂ contained the additional anionic associative polymer but not the anionic associative polymer; and
- Inventive Compositions A₃ and A₄ contained the anionic associative polymer and the additional anionic associative polymer. *Specification* at pp. 12-14.

According to the table at p. 14, Comparative Compositions A₁ and A₂ exhibited substantial phase separation over a time period of 5 days and 24 h, respectively. In contrast, the Inventive Compositions A₃ and A₄ showed no substantial phase separation over a period of 8 weeks. Accordingly, this Example shows the unexpected benefits of having the both the claimed anionic associative polymer and additional anionic associative polymer. Such benefits of no substantial phase separation are not taught by de la Mettrie '295 or the Research Disclosure, whether alone or in combination.

Because neither reference specifically suggests the claimed combination, Applicants respectfully submit that a *prima facie* case has not been established. Accordingly, Applicants respectfully request withdrawal of this rejection.

de la Mettrie '295, Research Disclosure, and de la Mettrie '195

Claim 7 is rejected under § 103(a) as being unpatentable over U.S. Patent No. 5,989,295 ("de la Mettrie '295") in view of Research Disclosure, December 1999, pp. 1552-1554 (XP-000934522, "Research Disclosure"), and further in view of

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U.S. Patent No. 5,976,195 ("de la Mettrie '195"). *Final Office Action* at pp. 2-3.

Applicants respectfully traverse this rejection.

The Examiner maintains the rejection "for the same reasons stated above."

Id. In the previous Office Action, the Examiner stated that one of ordinary skill in the art would be motivated to modify the anionic associative polymer of de la Mettrie '295 with the allyl ether of de la Mettrie '195. *Non-final Office Action* at p. 7.

Applicants respectfully submit that because there is no suggestion to combine de la Mettrie '295 and the Research disclosure, it necessarily follows that the combination of de la Mettrie '295, the Research disclosure, and de la Mettrie '195 is also improper. Applicants maintain their arguments of record.

Moreover, as discussed above, neither de la Mettrie '295, the Research disclosure, nor de la Mettrie '195 teach the benefits of no substantial phase separation, as evidenced by the Example in the specification and as discussed above.

Because neither reference specifically suggests the claimed combination, Applicants respectfully submit that a *prima facie* case has not been established. Accordingly Applicants respectfully request withdrawal of this rejection.

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III. Conclusion

Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extension of time under 37 C.F.R. § 1.136 required to enter this response and charge those additional fees to our Deposit Account No. 06-916.

Respectfully submitted,

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